

**Center for Reproductive Rights
Recommendations for EU Gender Equality Strategy 2020-2024**

3 December 2019

Introduction

The realization of gender equality is critical to ensuring just, stable and prosperous societies where all individuals can fully and equally enjoy their human rights. Gender equality is a fundamental value of the European Union and a core component of all EU member states' international human rights treaty obligations.

In the political guidelines for the new Commission, "A Union that Strives for More", Commissioner Von de Leyen stated that the new European Gender Equality Strategy must systematically address the way laws impact the decisions women take throughout their lives and that women must enjoy equal rights to make fundamental decisions about their lives.

Ensuring that all women are able to make decisions about their lives, without discrimination, violence or coercion, necessitates action to guarantee all women's sexual and reproductive health and rights in law, policy and practice. Failures to protect women's sexual and reproductive health and rights are both a cause and consequence of gender-based discrimination and inequality.¹

Gender equality can only be achieved if women's sexual and reproductive health and rights are guaranteed. Actions designed to assist member states in their efforts to guarantee effective protection of all women's sexual and reproductive health and rights must be included in the new Gender Equality Strategy. Indeed, the promise of gender equality will remain unfulfilled if the new Gender Equality Strategy does not enable the Commission to support efforts to advance women's sexual and reproductive health and rights in the EU and across the world.

The Commission has identified ending gender-based violence and tackling harmful gender stereotypes in the EU, alleviating intersectional forms of discrimination faced by marginalized groups of women in the EU, and promoting gender equality across the world as core priorities for the new Gender Equality Strategy. This submission outlines how the Commission should incorporate efforts to advance women's sexual and reproductive health and rights within each of these core priorities and makes specific recommendations for Commission efforts in the 2020-2024 Strategy.

¹ Council of Europe Commissioner for Human Rights, Issue Paper, Women's sexual and reproductive health and rights in Europe, p. 18.

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a. Combatting backlash against gender equality and shrinking civil society space

In recent years we have witnessed sustained backlash against gender equality within the EU. This backlash has specifically targeted women's sexual and reproductive health and rights and has led to initiatives in many member states seeking to weaken laws and policies that protect women's sexual and reproductive health and rights and that address gender-based violence.²

This backlash against gender equality is visible in damaging rhetoric and discourse that uses the term 'gender ideology' and seeks to malign the concept of gender equality as part of an anti-gender equality and anti-human rights effort. Where this backlash leads to regressive legal and policy changes it contravenes the international legal principle of non-retrogression, which prohibits regressive steps that undermine, restrict or remove existing rights protections or entitlements.³

The European Parliament, the Council of Europe Commissioner for Human Rights, the UN High Commissioner for Human Rights, and other international human rights mechanisms have expressed serious concern in recent years regarding retrogressive efforts in Europe to roll back existing gender equality and sexual and reproductive health and rights protections and entitlements.⁴

Of particular concern are the following:

- Backlash against member states' and the EU's ratification of the Council of Europe Convention on preventing and combatting violence against women and domestic violence (Istanbul Convention). This has manifested in several member states and has prevented ratification in some cases. It has also so far prevented planned EU ratification of the treaty.
- Retrogressive legislative initiatives in a number of member states that seek to regressively restrict women's access to key reproductive health services such as emergency contraception and safe and legal abortion care.
- Backlash related to the human rights and equality of LGBTI individuals. For example, in some member states public referenda have sought to restrict the definition of family or marriage to different-sex couples and thereby prohibit same sex marriage.

² See European Parliament resolution of 13 February 2019 on experiencing a backlash in women's rights and gender equality in the EU (2018/2684(RSP); Backlash in Gender Equality and Women's and Girls' Rights, study requested by the FEMM Committee; Council of Europe Commissioner for Human Rights, Issue Paper, Women's sexual and reproductive health and rights in Europe, p. 21-23.

³ See for example, CESCR: General Comment No. 22, paragraph 38; General Comment No. 3, paragraph 9; General Comment No. 14, paragraphs 32, 48, 50. See also "Maastricht guidelines on violations of economic, social and cultural rights", 1997, Guideline 14(e); "Limburg principles on the implementation of the ICCPR", 1987, Principle 72.

⁴ Council of Europe Commissioner for Human Rights, Issue Paper, Women's sexual and reproductive health and rights in Europe, p. 50; European Parliament resolution of 13 February 2019 on experiencing a backlash in women's rights and gender equality in the EU (2018/2684(RSP); Council of Europe Commissioner for Human Rights, statement, We need to stand up for women's sexual and reproductive health and rights; Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, International Women's Day, 8 March Backlash against women's rights progress hurts us all.

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- Backlash against the provision of comprehensive evidence-based sexuality education in schools has also emerged in some member states, even though it is a vital component of any effective gender-based violence prevention strategy.

At the same time civil society organizations working on sexual and reproductive health and rights and women human rights defenders are increasingly facing threats in their work, including hate speech, threats of violence and smear campaigns. They are particularly impacted by the shrinking space for civil society that is a growing concern in some member states and are often specifically targeted because of their work on advancing gender equality and sexual and reproductive health and rights.

These acute and severe challenges to the EU's foundational principle of gender equality demand a series of urgent and strategic responses and it is critical that the new Gender Equality Strategy address these concerns and that the Commission initiate concerted efforts in this area.

Recommendations and key actions:

- The Strategy should clearly underline that the Commission is deeply concerned by backlash and regression on gender equality and women's sexual and reproductive health and rights in the EU and that it will make efforts to stem rollbacks, including through awareness raising initiatives and dissemination of good practices.
- The Strategy should commit the Commission to closely monitoring proposals by member states that would undermine, restrict or remove existing entitlements and protections for gender equality, including women's sexual and reproductive health and rights.
- The Strategy should outline that the Commission will provide support to member states in their efforts to prevent backlash and attacks on gender equality and sexual and reproductive health and rights.
- The Strategy should include a commitment by the Commission to undertake targeted public awareness measures across the EU to highlight the range of harmful gender stereotypes that lead to denials of gender equality and violations of sexual and reproductive health and rights, and that underly much of the backlash that has emerged.
- The Strategy should outline that EU funding instruments will provide funding for women human rights defenders and civil society organizations working to counter backlash and regression on gender equality and to advance women's sexual and reproductive health and rights.
- The Strategy should commit to dedicated efforts to strengthen protection and support for civil society organizations and women human rights defenders both within the EU and across the world who are working to advance gender equality and women's sexual and reproductive health and rights.
- The Commission should establish an early-warning mechanism to monitor legislative proposals and other state actions that limit the ability of civil society working on gender equality and sexual and reproductive health and rights to operate freely and effectively in the EU. Specific attention should be paid to shrinking civil society space in the context of monitoring the EU Action Plan for Human Rights and Democracy and implementation of the SDGs.

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- The Strategy should propose an annual exchange with the Council of Europe Commissioner for Human Rights, the European Institute for Gender Equality and the Fundamental Rights Agency and civil society on remaining challenges to achieving gender equality in the EU, including sexual and reproductive health and rights, and any continuing threats of backlash against gender equality and women's human rights.

b. Combating gender-based violence

Across the EU women continue to experience multiple forms of gender-based violence that violate their human rights, and in particular their sexual and reproductive health and rights. The persistence of widespread gender-based violence against women is a grave concern and the EU must step up and intensify its efforts to combat and eradicate all forms of gender-based violence against women within the EU.

The Strategy should reaffirm the Commission's commitment to advance efforts to eradicate all forms of gender-based violence against women and adopting all necessary measures in this regard, including through promoting ratification and effective implementation of the Istanbul Convention. In addition, to be effective the new Gender Equality Strategy must focus on actions that support survivors' access to the essential services package as elaborated by UN Women, UNFPA, WHO, UNDP and UNODC.⁵

➤ *Access to sexual and reproductive health care for survivors of sexual violence*

According to the Fundamental Rights Agency, one in ten women in the EU has experienced sexual violence since the age of 15 and one in twenty women has been raped.⁶ Sexual violence is one of the most egregious violations of women's sexual and reproductive health and rights.

Ensuring that all survivors of sexual violence have access to the essential services package is vital and only by guaranteeing this can the EU and its member states' response be effective and victim-centered. The essential services package includes critical sexual and reproductive health services, such as emergency contraception, safe and legal abortion, post-exposure prophylaxis for HIV infections, and diagnosis and treatment for sexually transmitted infections.

However, across the EU women who are survivors of sexual violence often do not have access to this minimum package of essential services. In particular, in some countries provision of emergency contraception, safe and legal abortion care, post-exposure prophylaxis, and forensic examinations for survivors of sexual violence is lacking. Failures to guarantee survivors' access to these services violates members states' obligations under international and regional human rights standards and contravenes public health recommendations. In addition, stigma and harmful

⁵ UN Women, UNFPA, WHO, UNDP, and UNODC, Essential Services Package for Women and Girls Subject to Violence.

⁶ Fundamental Rights Agency, Violence against Women: an EU-wide survey, Luxembourg: Publication Office of the European Union, 2014, p. 9.

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gender stereotypes also continue to undermine women's ability to seek and obtain the care they need.

➤ *Gender-based violence in health care settings*

Women face different forms of gender-based violence in a range of contexts, however the risks of violence can be particularly high in institutional care settings or health care contexts, and specifically in reproductive health care facilities.

In recent years, gender-based violence during facility-based childbirth and in other reproductive health care settings has been exposed in several EU member states and has been shown to be widespread and systematic in nature. This violence includes physical abuse, profound humiliation and verbal abuse, coercive medical procedures (including forced sterilization, episiotomy and fundal pressure), and refusal to provide anesthetics or pain medication during medical procedures.⁷

The Council of Europe Commissioner for Human Rights, the UN Special Rapporteur on Violence Against Women and the World Health Organization have condemned this violence and have outlined that it is part of a continuum of human rights violations that take place as a result of lack of respect for women's equal status and structural inequality.⁸

If the new Gender Equality Strategy is to effectively respond to gender-based violence in the EU, it must encompass efforts designed to address gender-based violence in health care settings, and specifically in the context of reproductive health care.

Recommendations and key actions:

- The Strategy should outline that the Commission will support member states in their efforts to implement the Victim's Rights Directive in a manner that responds to the specific needs and circumstances of survivors of gender-based violence. The Strategy should explicitly underline that this includes ensuring that all survivors of sexual violence have access to the essential services package, including sexual and reproductive health care.
- The Strategy should include a commitment to conduct research into the barriers that continue to impede survivors' access to essential sexual and reproductive health services in the EU. Malta is the only member state where laws do not allow access to safe abortion care in situations of pregnancy resulting from rape. All other EU member states have legalized abortion in such situations, either through provisions allowing abortion on request or through specific provisions. However, in some member states survivors of sexual violence face a range of barriers which undermine their access to legal services in practice.

⁷ Council of Europe Commissioner for Human Rights, Issue Paper, Women's sexual and reproductive health and rights in Europe, p. 40; Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence, U.N. Doc A/74/137.

⁸ Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence, para. 9; World Health Organization, statement on prevention and elimination of disrespect and abuse during childbirth.

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- The Strategy should outline that the Commission will take efforts to disseminate good practices in ensuring all survivors of sexual violence have access to the essential services package, including sexual and reproductive health care.
- The Strategy should include a commitment by the Commission to undertake targeted public awareness measures across the EU to highlight the entitlement of survivors of sexual violence to essential sexual and reproductive health care services. These should include awareness raising initiatives designed for member states and service providers as to what this essential package of health care services includes.
- The Strategy should include a commitment to conduct research into gender-based violence in institutional and health care settings in the EU, and to disseminate good practices in efforts to combat this violence and address gender-based violence against women in childbirth.
- The Strategy should commit to awareness raising initiatives across the EU in relation to gender-based violence in health care settings.
- The Commission should provide support to member states in their efforts to ensure ratification and effective implementation of the Istanbul Convention.
- The Strategy should include measures for strengthening collection of disaggregated data on gender-based violence in the EU, including on gender-based violence in health care settings.
- The Strategy should outline that EU funding instruments will provide funding for women human rights defenders and civil society organizations working to eradicate all forms of gender-based violence against women, including violations of women's sexual and reproductive health and rights.

c. Addressing intersecting forms of inequalities and discrimination

There is an urgent need for concerted action by the Commission to address the multiple and intersecting forms of inequality and discrimination affecting women in the EU. In particular, special attention must be paid to the sexual and reproductive health and rights of Roma women and other ethnic minorities, asylum seeking, refugee and undocumented migrant women and women with disabilities.

➤ ***Roma women***

Roma women in the EU face systemic and persistent discrimination and grave violations of their sexual and reproductive rights. In a number of EU member states, they experience ethnic segregation and racial harassment and abuse in health care settings, including in maternal health care facilities.⁹ This means that they are placed in segregated sleeping and childbirth rooms and wards and have segregated bathrooms and eating facilities. Their segregated facilities are regularly over-crowded and cleaning services may refuse to clean them. As a result, Roma women in some EU member states have to share beds in maternity wards with other women; their segregated bathroom facilities can be extremely unhygienic because cleaning staff do not clean them; and at

⁹ Council of Europe Commissioner for Human Rights, Issue Paper, Women's sexual and reproductive health and rights in Europe, p. 43.

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times they have to give birth on soiled or dirty bed linen. Roma women also face exacerbated forms of gender-based violence during childbirth and in reproductive health care settings.

Additionally, in a number of EU member states Roma women have also been subjected historically to systematic practices of forced and coercive sterilization. Forced sterilization is a crime and form of gender-based violence against women that causes physical and psychological harm and that may amount to torture or cruel, inhuman and degrading treatment.¹⁰ However, in some of these EU member states the historical forced and coercive sterilization of Roma women has yet to be remedied. Survivors of forced and coercive sterilization have not been able to obtain adequate reparations, including compensation. Obstacles in access to justice and redress include absence of effective investigations, failures to prosecute perpetrators, restrictive statutes of limitation and other procedural barriers, and failures to establish comprehensive inquiry mechanisms and reparation schemes.¹¹

➤ *Disaggregated data*

Across the EU ethnic minority and undocumented migrant women continue to experience elevated rates of maternal mortality and morbidity compared to the majority population.¹² These discrepancies attest to serious maternal health inequalities and barriers facing certain population groups in access to affordable and quality reproductive and maternal health care. Undocumented migrant women in particular face a range of legal and policy barriers in access to maternal and other reproductive health care exposing them to risks to their health and lives.

Collection of disaggregated data is essential to enable evidence-based assessments and monitoring of how different groups are affected by laws and policies and address disparities and inequalities they may face in the enjoyment of human rights, including sexual and reproductive health and rights. However, EU many member states fail to collect adequate disaggregated data to enable them identify disparities in maternal and reproductive health and design responsive policies and programs.

International human rights bodies systematically recommend that states collect disaggregated health data, in compliance with human rights, based on characteristics such as sex, ethnicity, nationality, age, social status, sexual orientation and gender identity, and immigration status.

Recommendations and key actions:

¹⁰ See, e.g., Article 39 of the Istanbul Convention; Human Rights Committee, General Comment No. 28: Article 3 (The equality of rights between men and women), para. 11, HRI/GEN/1/Rev.9 (Vol. I) (2000); Special Rapporteur on violence against women, its causes and consequences, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44, paras. 45, 51-52, U.N. Doc. E/CN.4/1999/68/Add.4 (1999). See also Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Human Rights Council, para. 46, U.N. Doc. A/HRC/22/53.

¹¹ Council of Europe Commissioner for Human Rights, Issue Paper, Women's sexual and reproductive health and rights in Europe, p. 44-45.

¹² Center for Reproductive Rights, *Perilous Pregnancies: Barriers in access to affordable maternal health care for undocumented migrant women in the European Union*, p. 11, 13.

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- The Strategy must recognize the intersecting forms of discrimination that women experience based on their sex and gender but also their ethnicity, nationality, age, disability, social status, sexual orientation and gender identity, or migration status and ensure that actions implemented under the Strategy take account of and respond to the specific needs of these groups.
- The Commission should undertake awareness raising activities on intersecting forms of discrimination, including with regard to sexual and reproductive health and rights, experienced by women in the EU.
- The Commission should commit to adopting a strategy with targeted and specific actions for addressing gender inequalities and reproductive and maternal health violations experienced by Roma women.
- The Commission should undertake regular monitoring and reporting on gender-based discrimination and violations faced by Roma women in the EU, including in the area of sexual and reproductive health and rights.
- The Strategy should include a commitment to conduct research into practices of ethnic segregation and racial harassment and abuse against Roma women in health care settings in the EU.
- The Commission should ensure that its future EU Roma Framework strategies address the grave forms of discrimination and abuses faced by Roma women, including ethnic segregation, racial harassment, abuse and humiliation in maternal health care and other reproductive health care settings.
- The Strategy should outline the Commission's recognition of the need for member states to guarantee effective remedies and reparations to all survivors of past practices of forced and coercive sterilization and its commitment to providing guidance and support to member states in adopting comprehensive inquiry and reparation schemes.
- The Strategy should outline measures for improved human rights-compliant collection of disaggregated data across a range of key indicators, including sexual and reproductive health and rights, to assess inequities and disadvantage that may be experienced by certain groups of women. In this connection the Commission should undertake to identify good practices for collection of disaggregated maternal mortality and morbidity data.

d. Promoting implementation of the SDGs

The EU has committed to implementing the Sustainable Development Goals in both its internal and external policies. Under the Sustainable Development Goals the EU and its member states have made commitments to ensure healthy lives and promote well-being for all at all ages (Goal 3), to achieve gender equality and empowerment of all women and girls (Goals 5), and to promote peaceful and inclusive societies for sustainable development, provide access to justice and build effective, accountable and inclusive institutions at all levels (Goal 16). Indicators for these goals specifically include the following:

- 5.1.1 Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex;

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- 5.2.1 Proportion of ever-partnered women and girls aged 15 years and older subjected to physical, sexual or psychological violence by a current or former intimate partner in the previous 12 months, by form of violence and by age;
- 5.2.2 Proportion of women and girls aged 15 years and older subjected to sexual violence by persons other than an intimate partner in the previous 12 months, by age and place of occurrence;
- 5.6.1 Proportion of women aged 15–49 years who make their own informed decisions regarding sexual relations, contraceptive use and reproductive health care;
- 5.6.2 Number of countries with laws and regulations that guarantee full and equal access to women and men aged 15 years and older to sexual and reproductive health care, information and education.

In order to meet these commitments, the EU and its member states must now ensure that by 2030 all women have universal access to sexual and reproductive health care services, including family planning, information and education.

However, across the EU member states are falling short in meeting these ambitious goals as legal, policy and practical barriers continue to violate, restrict and undermine women's and adolescent girls' sexual and reproductive health and rights and hinder their ability to obtain quality sexual and reproductive health care. The Commission has an important role to play in supporting member states' efforts to remove these barriers and restrictions and meet their SDG commitment to guarantee universal access to sexual and reproductive health care.

Recommendations and key actions:

- The Strategy should outline that the Commission will give priority to supporting effective implementation of the SDGs relevant to gender equality and sexual and reproductive health and rights by member states, including through the establishment of a monitoring mechanism and sharing of good practices among member states.
- The Commission should disseminate good practices in the design of effective measures to remove barriers that hinder women's and adolescent girls' universal access to sexual and reproductive health care services.
- The Commission should undertake awareness raising initiatives regarding member states' commitments under the SDGs, including through dissemination of good practices.
- The Strategy should propose the revision of the EU's SDG indicator set to include indicators on access to and unmet need for sexual and reproductive health care services, including family planning.

e. Promoting gender equality in the world

The current challenges and shortcomings in meeting the SDG commitments outlined above are even greater in countries in the global south where women face pervasive violations of their sexual and reproductive health and rights including high rates of maternal mortality and morbidity, unsafe abortion, unmet need for contraception, and lack of respect for women's free and informed

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consent. These human rights violations are often caused by highly restrictive laws and policies, harmful gender stereotypes, and weak health care and justice systems. The EU's continued support through its development policies for sexual and reproductive health and rights is critical to addressing these challenges.

A large number of countries in the global south continue to criminalize and place severe restrictions on women's access to safe and legal abortion. As a result, many women seek clandestine and unsafe abortions exposing them to grave risks to their health and lives and to increased rates of maternal mortality and morbidity. Removing legal and policy barriers to abortion is critical to reducing maternal mortality and morbidity rates due to unsafe abortion. The EU can play a critical role in supporting projects aiming to ensure that laws and policies in the area of sexual and reproductive health and rights are in line with international human rights standards.

Moreover, across the world a growing number of women are affected by conflict and humanitarian emergencies. This has resulted in an increase in sexual violence targeting women and girls and an increase in internally displaced persons (IDPs) and refugees, the majority of whom are women and children. Access to obstetric and antenatal care for pregnant women, access to contraceptive information and services, including emergency contraception, and access to safe abortion and post-abortion care, especially for survivors of sexual and gender-based violence, are among the most pressing issues facing women and girls affected by conflict. In addition, women and girls affected by conflict who have faced sexual violence or have been denied access to sexual and reproductive healthcare are rarely able to seek justice and remedies for the violations they have had to endure. The EU should give priority to the sexual and reproductive health and rights of women and girls affected by conflict, in particular their access to timely and quality maternal health care, contraception, safe abortion care, and post-abortion services. It should also support efforts towards ensuring access to justice and redress for sexual and reproductive rights violations and violations stemming from sexual violence

Finally, as mentioned above women human rights defenders and their organizations, in particular those defenders and organizations working to advance sexual and reproductive health and rights, are increasingly experiencing threats and risks and in many countries the space for civil society activities is shrinking, with women's rights and sexual and reproductive health and rights organizations increasingly targeted and their situation ever more precarious. In light of this it is critical that the EU gives a high priority to supporting and standing by women human rights defenders in its external actions.

Recommendations and key actions:

- The Strategy should outline that EU funding instruments will provide funding through its development cooperation to efforts by civil society organizations to advance gender equality and reform discriminatory laws and policies in the area of sexual and reproductive health and rights.
- The Strategy should outline that the Commission will continue to give high priority to sexual and reproductive health and rights in its development cooperation policies and programs and to increasing its funding for activities in this area.

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- The Commission should together with the EEAS and member states promote and support implementation of Security Council Resolutions 1325 and 1820 on women, peace and security with a focus on sexual and reproductive health and rights for all women and girls affected by conflict and access to justice and reparations for violations of their rights in this regard., including in the context of the EU Strategic Approach to WPS and the Action Plan for its implementation.
- The Commission should support regular monitoring and data collection on sexual violence and the provision of sexual and reproductive health services to women and girls affected by conflict.
- The Commission should ensure that its humanitarian aid gives high priority to sexual and reproductive health and rights, including the provision of maternal health care, contraception, safe abortion care, and post-abortion services to women and girls affected by conflict and humanitarian emergencies.